



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

JUN 21 2016

Ms. Elvira F. Hasty

Ponte Vedra Beach, Florida 32082

RE: MUR 6813
Cox for Congress and David Cox in
his official capacity as treasurer
David Cox
Gregory F. Smith

Dear Ms. Hasty:

This is in reference to the complaint you filed with the Federal Election Commission on April 29, 2014, concerning Cox for Congress, David Cox, and Gregory F. Smith. Based on that complaint, on June 14, 2016, the Commission dismissed the allegations that Cox for Congress and David Cox in his official capacity as treasurer, David Cox, and Gregory F. Smith violated the Federal Election Campaign Act of 1971, as amended (the "Act"). At the same time, the Commission reminded Cox for Congress to refund the excessive contributions made by Gregory F. Smith and amend its 2013 October and Year End Reports to reflect the updated information. The Factual and Legal Analysis, which more fully explains the basis for the Commission's decision, is enclosed.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66132 (Dec. 14, 2009).

The Act allows a complainant to seek judicial review of the Commission's dismissal of this action. See 52 U.S.C. § 30109(a)(8).

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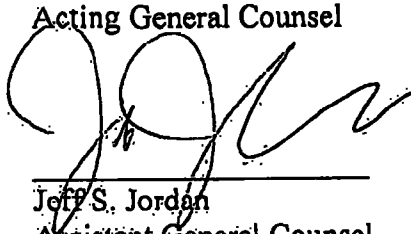
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If you have any questions, please contact me at (202) 694-1650.

Sincerely,

Daniel Petalas
Acting General Counsel

BY:



Jeff S. Jordan
Assistant General Counsel
Complaints Examination
& Legal Administration

Enclosure
Factual and Legal Analysis

100-410000-1000

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Cox for Congress and David Cox
as treasurer
David Cox
Gregory F. Smith

MUR 6813

I. INTRODUCTION

This matter was generated by a complaint alleging violations of the Federal Election Campaign Act of 1971, as amended (the "Act") and Commission regulations by Cox for Congress and David Cox as treasurer, David Cox, and Gregory F. Smith. It was scored as a low-rated matter under the Enforcement Priority System, by which the Commission uses formal scoring criteria as a basis to allocate its resources and decide which matters to pursue.

II. FACTUAL AND LEGAL ANALYSIS

A. Factual Background

Complainant Elvira F. Hasty alleges that Smith made and the Committee accepted excessive contributions during the 2014 election cycle. Compl. at 1-2. The complainant also alleges that the Committee improperly reported a \$3,000 contribution from Smith as a loan, and that Smith's corporation, Smith, Powell and Associates, made a \$2,000 prohibited contribution to the Committee. *Id.* Finally, the Complainant alleges that Smith's name is spelled differently in several disclosure reports, possibly to avoid detection of his excessive contributions. *Id.* at 2. Complainant bases her allegations on information contained in the Committee's disclosure reports as follows:

1

CONTRIBUTOR	DATE	AMOUNT	ELECTION	REPORT AND NOTES
Gregory Smith	5/22/13	\$500	Primary	Original 2013 July Quarterly and Amended 2013 July Quarterly (5/15/14)
Gregory Smith	6/20/13	\$3,000	Primary	Same; contribution also identified on Schedule C as a loan
Greg Smith	7/12/13	\$500	Primary	Original 2013 October Quarterly; Amended 2013 October Quarterly (5/15/14) shows contributor as "Greggory Smith;" \$3,000 "loan" from prior report not carried over
Greg Smith	9/28/13	\$500	Primary	Same
Gregg Smith	12/6/13	\$500	Primary	Original 2013 Year End Report; Amended 2013 Year End (5/15/14) changed name to "Greggory Smith;"
Smith, Powell, and Associates	12/5/13	\$500	Primary	Original 2013 Year End and Amended 2013 Year End
Smith, Powell, and Associates	12/13/13	\$1,500	Primary	Same
Gregg Smith	1/30/14	\$500	Primary	April 2014 Quarterly Report

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The Complainant alleges that Smith's individual contributions exceeded the maximum individual contribution limit, which, even if the contributions were designated to both the primary and general elections. *Id.* at 1. The Complainant further alleges that Smith's

1 corporation is comprised of two partners, and thus half of its \$2,000 contribution should be
2 attributable to Smith, thereby further increasing his excessive contribution. *Id.* at 2.

3 Cox and the Committee responded that Cox and his “team” “immediately” began
4 auditing the Committee’s filings and amending any mistakes. Cox Resp. at 1. Cox also said he
5 intended to amend the filings for name consistency and return any excessive funds. *Id.* Cox
6 stated that he was a first-time candidate and did not act intentionally. *Id.*

7 Smith responded that he was unaware of campaign contribution limits. Smith Resp. at 1.
8 He said that he understood that the Committee would be refunding him \$3,000. *Id.* He also said
9 that Smith, Powell and Associates is his franchise and that he is its sole proprietor. *Id.*

10 **B. Legal Analysis**

11 During the 2014 election cycle, the individual contribution limit was \$2,600 to any
12 candidate or his or her authorized committee per election. 52 U.S.C. § 30116(a)(1)(A). The
13 term “contribution” includes loans. 52 U.S.C. § 30101(8)(A)(i). Political committees may
14 accept contributions from partnerships and certain LLCs. *See* 11 C.F.R. §§ 110.1(e) (partnership
15 contributions), 110.1(g) (LLC contributions). Political committees may also accept contributions
16 from sole proprietorships, so long as the sole proprietor is permitted to make a contribution under
17 the Act. *See* Advisory Op. 1980-89 (Coelho) at 2 (a contribution by a sole proprietorship is
18 treated as a contribution by the individual who is the sole proprietor of the business); Advisory
19 Op. 1989-21 (Create-a-Craft) at 2 (sole proprietors are subject to the limitations concerning
20 excessive, as opposed to prohibited, contributions).

21 Smith, while using one of the various first names of Greg, Gregg, Gregory, or Gregory,
22 contributed a total of \$5,500 to the Committee, all designated for the primary election, including
23 a \$3,000 “loan.” Because Smith did not make any general election contributions, \$2,600 of his

1 \$5,500 total contribution could have been redesignated for the general. It appears, however, that
2 the Committee did not follow the proper procedures in order to timely seek redesignation of the
3 primary contributions. See 11 C.F.R. § 110.1(b)(5)(ii)(B)(5).¹

4 In addition, the sole proprietorship of Smith, Powell, and Associates contributed \$2,000
5 to the Committee. Since Smith is the sole proprietor of Smith, Powell, the \$2,000 contribution is
6 also attributed to Smith. Thus, Smith contributed a total of \$7,500 in primary contributions to
7 the Committee. In the absence of any redesignation, Smith exceeded the contribution limits for
8 the primary election by \$4,900. The Committee appears to have refunded \$300 to Smith on June
9 29, 2014, which still leaves \$4,600 in unrefunded primary contributions that exceed the per
10 election limitation. 52 U.S.C. § 30116(a)(1)(A).

11 Therefore, Gregory F. Smith violated 52 U.S.C. § 30116(a)(1)(A) by making excessive
12 contributions, and Cox for Congress violated 52 U.S.C. § 30116(f) by accepting excessive
13 contributions. The Committee also appears to have misreported a \$3,000 contribution by Smith
14 as a loan in its original and amended 2013 July Quarterly Reports.²

15 In light of the amounts at issue, the fact that the candidate was a first-time candidate and
16 the contributor was not an experienced contributor,³ and the Committee's request to terminate,
17 the Commission exercises its prosecutorial discretion, pursuant to *Heckler v. Chaney*, 470 U.S.
18 821 (1985), and dismisses this matter as to Cox for Congress and David Cox in his official
19 capacity as treasurer, David Cox, and Gregory F. Smith. Additionally, the Commission reminds

¹ The notice to the contributor regarding redesignation must be sent within 60 days of the receipt of the contribution. Otherwise, the excessive contribution must be refunded. 11 C.F.R. § 110.1(b)(5)(ii)(B).

² Although Cox said in his and the Committee's Response that he would file amended reports to correct name consistency and refund any excessive contributions, the Committee's amended reports do not show such actions, except for a \$300 refund.

³ According to Commission records, Smith made one prior federal contribution in 2008 for \$1,000.

- 1 the Committee to refund the excessive contributions to Gregory F. Smith and file amended
- 2 disclosure reports to reflect such activity.

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